IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4747 of 2003
Date of Decision:August 14, 2007

Uttar Haryana Bijli Vitran Nigam & another .... Appellants

Versus

Chattar Singh .... Respondent

Before: Hon'ble Mr. Justice R.S. Madan.

Present: Ms. Geeta Sharma, Advocate for the appellants.
Mr. S.K. Verma, Advocate for the respondent.

R.S. Madan (J)

1. This Regular Second Appeal is directed against the judgment and decree dated 13.02.2003 rendered by the District Judge, Jind in Civil Appeal No.71 of 2002 by which he dismissed the appeal filed by the present appellants.

2. Brief facts of the case are that plaintiff No.1 and 2 were running an atta chakki at Village Kishanpura, Rohtak Road, Jind having consumer account No.R-205 SP. The aforesaid meter installed in the atta chakki was regularly checked by the Meter Reader every month for recording the reading of the meter.

3. That the adjudicating report conducted by Sh. S.C. Kapoor, A.D.V., Jind on 1.06.1999 in the absence of the plaintiff vide which he was charged that he has tempered with the meter and thereby a penalty of recovery of Rs.68808/- was imposed on the plaintiff.

4. It is further the case of the plaintiff that on 10.05.1999 the meter was checked by the Inspector along with his staff in the atta chakki premises of the plaintiff and all the seals of the meter were found intact. It

was only pointed out that capacitor was not installed. So the amount for non-installing the capacitor was charged from the plaintiff.

5. It is further the case of the plaintiff that the defendant-respondent have calculated the amount keeping in view the average of last six months which itself on the face of it is not tenable because the meter was earlier checked 21 days before the meter was checked by Sh. S.C. Kapoor, ADV, Jhind and in case any penalty was to be imposed, it was to be calculated keeping in view the period of 21 days. Therefore, the penalty imposed by the defendant/respondent is not tenable. The plaintiff thus prayed through the suit for the declaration that the aforesaid demand of the defendant-respondent is illegal and null and void and the same is not in accordance with law.

6. The aforesaid suit was resisted by the defendant/respondent by filing a written statement. It was projected by way of preliminary objection such that the suit is not maintainable in the present form and the suit is hit by Section 2 of Electricity Act.

7. On merits. It was submitted that meter account NO.R-205-SP is in the name of Chatter Singh s/o Munshi Ram and plaintiff No.2 is usinmg the aforesaid energy on behalf of the plaintiff. The amount of Rs.68808/- has rightly been charged and consumer is bound to deposit to pay the same. With these averments all other facts mentioned in the plaint are stated to be wrong and denied and dismissal of the suit is prayed for.

8. In the replication filed by the plaintiff, all the pleas raised by the defendants were controverted and the pleas taken in the plaint were reiterated.

9. On the pleadings of the parties, the learned Trial Court framed the following issues :-

(1)Whether checking report dated 1.06.1999 conducted by Sh. S.C. Kapoor and penalty of Rs.68808/- imposed on the

basis of above report are illegal, null and void and not binding on the rights of the plaintiffs, as alleged? OPP.

(2)If issue No.1 is proved, whether the plaintiffs are entitled for the relief of injunction as prayed for? OPP.

(3)Whether the suit is not maintainable in the present form? OPD.

(4)Whether the plaintiffs have no cause of action to file the suit? OPD.

(5)Whether the suit is barred under Section 2 of Indian Electricity Act (Haryana Amendment), 1989, as alleged? OPD.

(6)Relief.

9. Both the parties adduced evidence in support of their claim set up in the plaint.

10. After evaluating the evidence brought on the record, the learned Additional Civil Judge, Jind returned the finding of issue No.1 and 2 in favour of the plaintiffs and against the defendants and observed that the penalty of Rs.68808/- imposed by the defendant/appellant is not correct and the same is not liable to be recovered from the plaintiffs.

11. The finding of the remaining issues were also decided in favour of the plaintiff restraining the defendants from disconnecting the meter supply.

12. Aggrieved by this, the plaintiff filed an appeal before the learned District Judge, Jind, who after hearing the learned counsel for the parties as well as evaluating the evidence brought on the record agreed with the findings recorded by the Court below and dismissed the appeal of the appellant.

13. The filing of the present Regular Second Appeal is another attempt made by the Uttar Haryana Bijli Vitran Nigam.

14. Heard.

15. It is a case where the judgment of the learned Civil Judge (Jr. Division) is based on facts and evidence led by the parties have rightly been interpreted by the First Appellate Court as well. No substantial question of law has been raised by the appellant involved in the present appeal.

16. In this view of the matter, this Court is bound by the embargo put in Section 100 (4) of the Civil Procedure Code. This Court cannot be a third dice in the gamble for evaluating the evidence.

17. No merit. Dismissed.

(R.S. Madan)
Judge

August14, 2007
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